

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

4:13-CR-3032

vs.

ISRAEL DEWAYNE MILEAGE,

Defendant.

MEMORANDUM AND ORDER

This matter is before the Court the defendant's pro se motion for appointment of counsel (filing 84). The defendant requests that counsel be appointed in light of the Supreme Court's recent ruling in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and because, the defendant asserts, his sentence was impermissibly enhanced in violation of his due process rights.

The defendant's motion will be denied. First, the defendant has not moved for any underlying, substantive relief—in other words, there is nothing for counsel to assist him with. The Court assumes that the defendant is considering a motion for post-conviction relief under 28 U.S.C. § 2255. Leaving aside the fact that such a motion is almost certainly untimely, there is no general right to counsel in § 2255 proceedings. See *Abdullah v. Hedrick*, 392 F.3d 957, 963–64 (8th Cir. 2004).

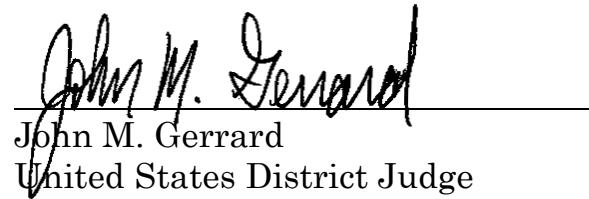
Finally, *Johnson* has no effect on the defendant's case. The defendant was charged in a three-count superseding indictment with possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841; conspiracy to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841 and 846; and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c). Filing 23. The defendant pleaded guilty to the first count and the government dismissed the remaining counts. See filing 49. *Johnson* related to sentencing enhancements under the Armed Career Criminal Act (ACCA), which imposes an increased prison term upon a defendant with three prior convictions for a "violent felony." See *Johnson*, 135 S. Ct. at 2555; 18 U.S.C. § 924(e)(1). The defendant was not convicted of being a felon-in-possession, as that count was dismissed. Nor was his sentence enhanced under the ACCA. Accordingly,

IT IS ORDERED:

1. The defendant's motion for appointment of counsel (filing 84) is denied.
2. The Clerk's office shall mail a copy of this memorandum and order to the defendant at his address of record.

Dated this 22nd day of July, 2015.

BY THE COURT:

  
John M. Gerrard  
United States District Judge